



Office of the Attorney General  
State of Texas

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Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-1148

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114793.

The Texas Department of Health (the "department") received a request for investigation records concerning complaints filed against Physicians Regional Hospital of Wylie, Texas (the "hospital"). You have submitted to this office as responsive to the request records pertaining to two such investigations and claim that the marked portions of these documents are excepted from disclosure by section 552.101 of the Government Code in conjunction with several confidentiality statutes. You also contend that some of the information at issue is protected by common-law privacy and the informer's privilege as incorporated into section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You inquire whether some of the information at issue that the department obtained from the hospital is confidential under chapter 241 of the Health and Safety Code. Subchapter G of chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals. Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." "Health care information" means "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(1). Section 241.153(3) provides several instances in which a patient's health care information may be disclosed without the patient's written authorization. One such instance is if the disclosure is to "a federal, state, or local government agency or authority to the extent authorized or required by law." *Id.* § 241.153(3). There is no provision which addresses the

re-release of the health care information by the department. Therefore, we do not believe that section 241.152 is applicable in this instance. You may not withhold any information under section 241.152 of the Health and Safety Code.

You next argue that portions of the documents must be withheld as confidential medical records. We agree. Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), applies to "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." The records at issue contain information that appears to have been directly obtained from medical records and communications and such information may be disclosed only in accordance with the MPA. See V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked in brackets the information that must be withheld under this statute. The department must release, however, any medical information the department obtained from other sources, such as interviews with the complainant or medical staff.<sup>1</sup>

Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." See also Health and Safety Code § 611.001 (defining "patient" and "professional"). The records at issue contain information that appears to have been obtained from mental health records and patient-professional communications. Both may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health and Safety Code § 611.002(b); see *id.* §§ 611.004, 611.0045. We have marked in brackets the information that must be withheld under sections 611.002 - .0045.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public pursuant to common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

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<sup>1</sup>Although we generally agree that most of the information you have highlighted in yellow regarding patients MR#1 through MR#10 is confidential under the MPA, it is not apparent to this office that the department obtained all such information directly from the patients' medical records. We have highlighted in blue the information the department must release unless you determine that this information in fact was obtained from the patients' medical records.

We note, however, that the requestor has narrowed his request to specifically exclude from the scope of his request "the names or identifying descriptions of any patients." The de-identification of the records at issue is sufficient to protect the privacy interests of the patients. *See Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995). With the deletion of patients' names and other identifying information, we do not believe that any additional information need be withheld pursuant to common-law privacy.

Finally, we address whether the name of a "complainant" may be withheld pursuant to the "informer's privilege" aspect of section 552.101 of the Government Code. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 391 (1983), 191 (1978). In this instance, the complainants reported suspected instances of neglect of elderly psychiatric patients to both the department and to Adult Protective Services. We agree that in this instance the department may withhold the complainants' identities pursuant to the informer's privilege.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/RWP/rho

Ref: ID# 114793

Enclosures: Marked documents

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